



Case Number: D 0015/09

D E C I S I O N
of the Disciplinary Board of Appeal
of 19 February 2010

Appellant: N.N.

Decision under appeal: Decision of the Examination Secretariat dated
9 October 2009 refusing the application for
enrolment of the EQE.

Composition of the Board:

Chairman: H. Preglau
Members: G. Weiss
P. Sugrañes Moliné

Summary of Facts and Submissions

I. The appeal lies from the decision of the Examination Secretariat dated 9 October 2009 according to which the appellant's application for enrolment for the European Qualifying Examination ("EQE") 2010 was refused.

II. The appellant had filed his application by facsimile on 23 September 2009 i.e. after the closing date. In the announcement of the EQE 2010 it was indicated under paragraph 3 that applications submitted by resitter candidates must be received on the entry form for the EQE 2010 no later than 18 September 2009.

III. On 18 November 2009 the appellant filed an appeal against that decision, relying in essence on the following grounds:

The deadline was missed due to complex litigation in the Federal Court of Australia in relation to an opposition appeal before the Australian Patent Office. The appellant was in charge in his company of handling this very important case. The preparatory work before the trial in the Australian Federal Court which commenced on 5 October 2009 was extremely lengthy and lasted three or four weeks before leaving the United Kingdom on 25 September 2009. Only once all the preparatory work had been completed did he realise that the entry form for the EQE 2010 had to be filed.

The appeal fee was paid on 18 November 2010.

IV. On 18 December 2009 the Board issued a communication informing the appellant that it could only confirm the

decision of the Examination Secretariat. Reference was made to Article 24(4), third sentence of the Regulation on the European Qualifying examination for professional representatives ("REE").

V. By facsimile received on 11 February 2010 the appellant pointed out that under the general principle of proportionality the application for entry into the EQE should be allowed. In this respect decision T 111/92 was cited, which applied this principle in a re-establishment of rights case. Furthermore, he explained that following the enormous pressure to complete the substantive work in good time before the trial in the Australian Federal Court, it was a simple mistake due to human error not to file the entry form for the EQE 2010.

VI. The appellant requested that the entry for the EQE 2010 be allowed considering the special circumstances involved and applying the general principle of proportionality.

Reasons for the decision

1. The appeal is admissible, but not allowable.
2. The appellant has not explained on what legal basis or on which legal grounds the Examination Secretariat must or could have accepted his application for enrolment despite being received at the EPO only after the Expiry of the relevant date which had been published pursuant to Article 20 REE. It is not disputed by him and is established jurisprudence of the Disciplinary Board of

Appeal that the provisions governing the EQE, in particular the REE and the Implementing Provisions, are *lex specialis* and that the EPC applies in connection with them only where they expressly refer to it (see D 7/05, OJ EPO 2007, 378, point 17 of the reasons, and further decisions cited there). None of the provisions of the EPC governing whether and in what circumstances the non-observation of a time limit can be regarded as excused, is referred to in the provisions governing the EQE. As a consequence, there is no legal basis for accepting late filed applications for enrolment and it is correctly indicated in point 4 of the Announcement of the EQE 2010 (OJ EPO 5/2009, 347) that applications received after the closing date will be refused and that Article 121 and 122 EPC are not applicable.

3. Article 20 REE and the Implementing Regulations express the legislator's intention to apply a strict deadline for enrolment. Setting a closing date for enrolment which is binding for the candidates is both justified and necessary in view of the legitimate purpose and overwhelming importance in ensuring timely and orderly preparation and organisation of the EQE (more than 2000 candidates are registered each year). As a matter of principle, the Board therefore takes the view that late filed enrolments should be accepted only in cases of "force majeure". this means that the event (here: litigation in the Federal Court of Australia in relation to an opposition appeal before the Australian Patent Office) must pass the tests of externality (nothing to do with the appellant's conduct), unpredictability (if the event could be foreseen, the candidate/appellant is obliged to have prepared for it) and irresistibility (the consequences of the event must

have been unpreventable). In the present case, the cause of the late filing of the appellant's application for enrolment was an error on his part. This does not qualify as "force majeure". Thus, there is no scope for applying the general principle of proportionality, since this would be contrary to the very strict provisions which apply to deadline for enrolment.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:

P. Martorana

H. Preglau